

Letters of Findings Number: 01-20120486
Individual Income Tax
For the Period 2009

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ISSUE

I. Individual Income Tax–Nonresident.

Authority: IC § 6-8.1-5-1(c); IC § 6-3-2-2(a); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of a proposed assessment.

STATEMENT OF FACTS

Taxpayer is an out-of-state individual who had income derived from horse racing at Indiana race tracks. Taxpayer did not file an Indiana income tax return for the year at issue. The Indiana Department of Revenue ("Department") issued a proposed assessment (based on "the best information available"), which also included the imposition of a penalty and interest. The Taxpayer protested, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Individual Income Tax–Nonresident.

DISCUSSION

At the outset, the Department notes that the notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Taxpayer's protest to the Department consisted of a copy of the proposed assessment and her federal tax return for 2009 (including Schedule F). The written explanation of the protest, in pertinent part, states: "There was a loss on income[,] there would be no Indiana tax due."

IC § 6-3-2-2(a) states in relevant part:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

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Taxpayer owned horses and raced the horses at Indiana race tracks. The income Taxpayer made from racing the horses at Indiana tracks is Indiana income, and under IC § 6-3-2-2(a) Taxpayer should have filed an Indiana income tax return. Taxpayer at the hearing stated that she had expenses on the horses, and provided Schedule F and "Federal Supporting Statements" for "other expenses." However, Taxpayer did not provide the Department with documentation showing what purported expenses were attributable to Indiana. Also Taxpayer, stated in her protest that there was a "loss on income"—Taxpayer has not established that there was an Indiana loss. As noted, Taxpayer bears the burden of proof under IC § 6-8.1-5-1(c). In the present case, Taxpayer has not met her burden of proof. Therefore, Taxpayer's protest is denied.

It is not clear whether Taxpayer was also protesting the penalty and interest that were assessed, but since Taxpayer did not develop any argument regarding the penalty and interest, Taxpayer is denied on those issues too. See Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)).

FINDING

Taxpayer's protest is respectfully denied.

Posted: 10/30/2013 by Legislative Services Agency

